

COPY

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10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SAN DIEGO

12  
13 CALIFORNIA DEPARTMENT OF TOXIC  
14 SUBSTANCES CONTROL,

Plaintiff,

15 v.

16 SOUTH BAY SAND BLASTING AND TANK  
17 CLEANING, INC.,

18 Defendant.  
19

Case No. **GIC 870979**

~~PROPOSED~~ JUDGMENT BY  
CLERK

20 Upon application of plaintiff pursuant to Section 25184.1 of the Health and Safety  
21 Code, the Clerk of this Court entered the following judgement:

22 Plaintiff California Department of Toxic Substances Control shall recover from defendant  
23 South Bay Sand Blasting And Tank Cleaning, Inc. the sum of FORTY-FOUR THOUSAND  
24 DOLLARS (\$44,000.00), as provided by Department of Toxic Substances Control  
25 Enforcement Order *In re South Bay Sand Blasting And Tank Cleaning, Inc.*, HWCA-  
26 20040509 (June 14, 2005).

27 I hereby certify this to be the Judgment in the above case.

28 **RUSSELL TAYLOR**

AUG 16 2006

CLERK OF THE SAN DIEGO SUPERIOR COURT

COPY

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CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

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10 SUPERIOR COURT OF CALIFORNIA

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13 CALIFORNIA DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL,

14 Plaintiff,

15 v.

16 SOUTH BAY SAND BLASTING AND TANK  
CLEANING, INC.,

17 Defendant.  
18

Case No.

GIC 870379

APPLICATION FOR  
JUDGMENT BY CLERK TO  
COLLECT ADMINISTRATIVE  
PENALTY (Calif. Health and  
Saf. Code §§ 25187 and 25184.1);  
CERTIFIED COPY OF  
ADMINISTRATIVE ORDER

Date: August 7, 2006

19  
20 The California Department of Toxic Substances Control ("Department") hereby applies  
21 to the Clerk of this Court, pursuant to California Health & Safety Code section 25184.1, for a  
22 judgment against South Bay Sand Blasting And Tank Cleaning, Inc. ("South Bay") to collect an  
23 administrative penalty in the amount of FORTY-FOUR THOUSAND DOLLARS (\$44,000.00).  
24 A certified copy of the Department's final administrative order imposing a penalty on South Bay  
25 in this amount is attached to this Application. (See In re South Bay Blasting And Tank Cleaning,  
26 Inc., Enforcement Order HWCA-20040509 (adopted June 14, 2005), hereinafter "Final Order,"  
27 attached hereto as "Exhibit 1.") A [Proposed] Judgment By Clerk is provided together with this  
28 application.

1 California Health & Safety Code section 25184.1 provides that the Department may  
2 apply to the clerk of an appropriate court for a judgment to collect a penalty imposed by an  
3 administrative order that has become final. The application, together with a certified copy of the  
4 final administrative order or decision, "constitutes a sufficient showing to warrant issuance of the  
5 judgment." (Health & Saf. Code § 25184.1.) Section 25184.1 further provides that "[t]he court  
6 shall enter the judgment immediately in conformity with the application."

7 Pursuant to Health and Safety Code section 25187, the Department may issue an  
8 administrative enforcement order for corrective action and/or imposing a penalty whenever it  
9 determines that a person or entity has violated specified provisions of the Health and Safety  
10 Code, or of any permit, rule or regulation issued or adopted pursuant to its provisions.

11 Administrative enforcement orders issued under Health and Safety Code section 25187  
12 become final unless the respondent files a timely written notice of defense requesting a hearing.  
13 (Health & Saf. Code § 25187(d)(1).) A notice of defense may be filed, and a hearing requested,  
14 the pursuant to subdivision (f) of section 25187. If the respondent avails itself of the hearing  
15 process, then "[t]he hearing decision issued pursuant to subdivision (f) shall be effective and  
16 final upon issuance." (Health & Saf. Code § 25187(g).) The respondent may seek judicial  
17 review of the decision by writ of mandate within 30 days of the date the final decision is issued.  
18 (Gov. Code § 11523.)

19 On January 18, 2005, DTSC issued an Enforcement Order (Docket HWCA 20040509)  
20 against South Bay determining that South Bay had violated title 22, California Code of  
21 Regulations section 67450.3, subdivision (a)(13)(G), and imposing an administrative penalty in  
22 the amount of FIFTY-FOUR THOUSAND DOLLARS (\$54,000). Pursuant to Health and  
23 Safety Code section 25187(f), South Bay timely filed a notice of defense and requested a hearing.

24 The matter was heard before an Administrative Law Judge, Office of Administrative  
25 Hearings, in Oakland, California on April 21, 2005. On May 9, 2005, the Administrative Law  
26 Judge issued a decision adjusting the Department's administrative penalty to FORTY-FOUR  
27 THOUSAND DOLLARS (\$44,000.00), but sustaining, in all other respects, the Department's  
28 original enforcement order. (See Final Order, Exh. 1, at p.9.) The Department officially adopted

1 decision of the Administrative Law Judge as its Final Order on June 14, 2005. (See id., cover  
2 page.)

3 On June 14, 2005, the Department served a copy of the Final Order by certified mail to  
4 South Bay at its business address located within the State of California. (See Declaration of  
5 Robert M. Olken, ¶¶4, 5.) In a cover letter sent to South Bay together with the Final Order, the  
6 Department indicated that it would accept payment of the \$44,000 penalty amount in four  
7 \$11,000 installments payable on September 15, 2005, December 15, 2005, March 15, 2005 and  
8 June 15, 2005. (See Id.) On July 8, the Department sent additional copies of the its June 14,  
9 2005 cover letter and Final Order to a new address for South Bay provided to the Department by  
10 a prior attorney of South Bay, again via certified mail.

11 Pursuant to Health and Safety Code section 25187(g), the Final Order became effective  
12 and final upon issuance. South bay did not file a writ of mandate challenging the decision of the  
13 Administrative Law Judge or otherwise seek judicial review of the Final Order. (See Declaration  
14 of Robert M. Olken, ¶ 6). To date, the Department has not received any payment of the \$44,000  
15 penalty imposed by the Final Order. (See Id., ¶ 8.)

16 The Department respectfully requests that the Clerk of this Court enter a judgment  
17 against South Bay Blasting And tank Cleaning, Inc. in the amount of FORTY-FOUR  
18 THOUSAND DOLLARS (\$44,000), in accordance with Health and Safety Code section  
19 25184.1 and with this application. A [Proposed] Judgment By Clerk is provided herewith.

20 Dated: August 7, 2006

Respectfully submitted,

21 BILL LOCKYER

22 Attorney General of the State of California

23 THEODORA BERGER

24 Senior Assistant Attorney General

KEN ALEX

Supervising Deputy Attorney General

25 Original signed by Raissa S. Lerner

26 RAISSA S. LERNER

Deputy Attorney General

27 Attorneys for Plaintiff

28 Department of Toxic Substances Control

# EXHIBIT 1

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

South Bay Sand Blasting and  
Tank Cleaning, Inc.  
[4 TTUs: SBSB-1, SBSB-4, SBSB-5,  
SBSB-6]  
3763 Dalbergia Street  
San Diego, California 92113

ID No: CAL 000 827 900

Respondent

Docket HWCA 20040509

ENFORCEMENT ORDER

Health and Safety Code  
Section 25187

INTRODUCTION

1.1. Parties. The State Department of Toxic Substances Control (Department) issues this Enforcement Order (Order) to South Bay Sand Blasting and Tank Cleaning, Inc. (Respondent).

1.2. Site. Respondent operated Transportable Treatment Units (TTUs) that treated hazardous waste at various sites within California. The 1998 notification for TTUs (SBSB-1, SBSB-4, SBSB-5, and SBSB-6) listed their physical address as 3763 Dalbergia Street, San Diego, California 92113.

1.3. Permit/Interim Status. The Department authorized the operation of TTUs (SBSB-1, SBSB-4, SBSB-5, and SBSB-6) under Permit by Rule (PBR) in July 1998 for SBSB-1 and August 1998 for SBSB-4, SBSB-5, and SBSB-6. The Respondent's TTUs treat hazardous waste on-site at customers' facilities. Bilge waters containing oil is a typical wastestream that the TTUs treat.

1.4. Jurisdiction. Health and Safety Code section 25187 authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the

Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.5. Exhibits. All exhibits attached to this Order are incorporated herein by this reference.

1.6. Applicable Statutes and Regulations. Copies of the statutes and regulations applicable to this Order are attached as Exhibit (A).

### DETERMINATION OF VIOLATIONS

2. The Department has determined that:

2.1. The Respondent violated California Code of Regulations, title 22, section 67450.3(a)(13)(G), in that on or about January 28, 2004, Respondent failed to submit a certification signed by the owner or operator, and by an independent, professional engineer registered in California, that closure of four (4) TTUs (SBSB-1, SBSB-4, SBSB-5, and SBSB-6, collectively "the four TTUs") had been completed in accordance with the closure plan, and that the closure plan met or exceeded the applicable requirements of California Code of Regulations, title 22, chapter 45.

2.2. The Respondent has sold the units such that it can no longer trace the whereabouts of the four TTUs. Because the units are no longer available for inspection, the Respondent cannot certify the four TTUs for proper closure and compliance. For these reasons, the four TTUs remain "not properly closed" under California law.

### SCHEDULE FOR COMPLIANCE

3. Based on the foregoing Determination of Violations, it has been determined that the Respondent cannot meet the regulatory requirements for closure of the four TTUs (SBSB-1, SBSB-4, SBSB-5, and SBSB-6). Therefore, no schedule for

compliance will enable Respondent to achieve compliance for the violations listed in section 2.1.

3.1. Submittals. All submittals from Respondent pursuant to this Order shall be sent to:

Charles A. McLaughlin, Chief  
State Oversight and Enforcement Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826-3200

3.2. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

3.3. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may:

- a. Modify the document as deemed necessary and approve the document as modified, or
- b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.



3.4. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.5. Endangerment during Implementation: In the event that the Department determines that any circumstance or activity (whether or not pursued in compliance with this Order) is creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

3.6. Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

3.7. Site Access: Access to the site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings,

including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

3.8. Data and Document Availability. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

3.9. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

3.10. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

3.11. Extension Request: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may,

prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.12. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

#### OTHER PROVISIONS

4.1. Additional Enforcement Actions: By issuance of this Order, the Department does not waive the right to take further enforcement actions.

4.2. Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondent to costs, penalties, and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

4.3. Parties Bound: This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

4.4. Time Periods. "Days" for purposes of this Order means calendar days.

#### PENALTY

5. Based on the foregoing DETERMINATION OF VIOLATIONS, the Department sets the amount of Respondent's penalty at \$54,000. Payment is due within 30 days from the effective date of the Order. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the

Respondent and Docket Number, as shown in the heading of this case. Respondent shall deliver the penalty payment to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21st floor  
P. O. Box 806  
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Charles A. McLaughlin, Chief  
State Oversight and Enforcement Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826-3200

RIGHT TO A HEARING

6. Respondent may request a hearing to challenge the Order. Appeal procedures are described in the attached Statement to Respondent.

EFFECTIVE DATE

7. This Order is final and effective twenty days from the date of mailing, which is the date of the cover letter transmitting the Order to Respondent, unless Respondent requests a hearing within the twenty-day period.

Date of Issuance January 18, 2005

Original Signed By Charles A. McLaughlin  
Charles A. McLaughlin, Chief  
State Oversight and Enforcement Branch  
Statewide Compliance Division  
Department of Toxic Substances Control

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South Bay Sand Blasting and Tank Cleaning, Inc.  
Docket HWCA 20040509